



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0767]

RIN 1625-AA87

Security Zone, Baltimore Harbor, Baltimore's Inner Harbor;
Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing certain waters of Baltimore Harbor, Baltimore's Inner Harbor, at Baltimore, Maryland. This action is necessary to safeguard persons and property, and prevent terrorist acts or incidents. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless granted permission from the Coast Guard Captain of the Port Baltimore or his designated representative.

DATES: This rule is effective on September 5, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0767]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Ronald L. Houck, at Sector Baltimore Waterways Management Division, Coast Guard; telephone 410-576-2674, e-mail Ronald.L.Houck@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a

rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impractical and contrary to public interest to delay the effective date of this rule. The Coast Guard was unable to publish a NPRM and hold a comment period for this rulemaking due to the short time period between event planners notifying the Coast Guard of details concerning the event, on August 9, 2013, and publication of this security zone. As such, it is impracticable to provide a full comment period due to lack of time. Furthermore, delaying the effective date of this security zone would be contrary to the public interest given the high risk of injury and damage during a large public gathering.

Under 5 U.S.C. 553(d) (3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment, therefore, a 30-day notice period is impractical. Delaying the effective date would be contrary to the security zone's intended objectives of protecting a large gathering of the public, as it would introduce

vulnerability to the maritime safety and security of the general public.

B. Basis and Purpose

The National Football League, of New York, NY, will sponsor the "NFL Kickoff Event", a highly-publicized celebration located at Baltimore, MD, scheduled on September 5, 2013. The activity begins at 7:30 p.m. with venue access granted at 6 p.m. During this event, a large gathering of the public is expected to take place along the promenade in Baltimore's Inner Harbor.

Activities associated with this event include a nationally-televised live music concert and fireworks display launched from barges, located in navigable waterways within the Captain of the Port's Area of Responsibility.

The Coast Guard has given each Coast Guard Captain of the Port the ability to implement comprehensive port security regimes designed to safeguard human life, vessels, and waterfront facilities while still sustaining the flow of commerce. The Captain of the Port Baltimore is establishing this security zone to protect a large gathering of the general public, mitigate potential terrorist acts, and enhance public and maritime safety and security in order to safeguard life, property, and the environment on or near the navigable waters.

C. Discussion of the Final Rule

Through this regulation, the Coast Guard will establish a

security zone. The security zone will be in effect from 5 p.m. until 11:59 p.m. on September 5, 2013. The security zone will include all navigable waters of Baltimore Harbor, Baltimore's Inner Harbor, from shoreline to shoreline, bounded on the east by a line drawn from position latitude 39° 17'03.41" N, longitude 076°36'28.35" W southerly to position latitude 39°16'58.24" N, longitude 076°36'27.59" W, located along the waterfront at Baltimore, MD (datum NAD 1983). This location is entirely within the Area of Responsibility of the Captain of the Port Baltimore, as set forth at 33 CFR 3.25-15.

This rule requires any unauthorized persons in the regulated area at the time this security zone is in effect to immediately proceed out of the zone. Except for vessels at berth, mooring, or at anchor, this rule temporarily requires all vessels in the designated security zone as defined by this rule to immediately depart the security zone. Entry into this security zone is prohibited, unless specifically authorized by the Captain of the Port Baltimore. U.S. Coast Guard personnel will be provided to prevent the movement of unauthorized persons into the zone. Federal, state, and local agencies may assist the Coast Guard in the enforcement of this rule. The Coast Guard will issue Notices to Mariners to further publicize the security zone and notify the public of changes in the status of the zone. Such notices will continue until the event is complete.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this security zone restricts vessel traffic through the affected area, the effect of this regulation will not be significant due to the limited size and duration of the regulated area. In addition, notifications will be made to the maritime community so mariners may adjust their plans accordingly.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently

owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate, transit through or anchor within the security zone during the enforcement period. The security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The security zone is of limited size and duration. Although the security zone would apply to the entire width of the harbor, traffic would be allowed to pass through the zone with the permission of the Captain of the Port. Before the effective period, maritime advisories will be widely available to the maritime community.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of

protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INTFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland

Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary security zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland

Security Delegation No. 0170.1.

2. Add § 165.T05-0767 to read as follows:

§ 165.T05-0767 Security Zone, Baltimore Harbor, Baltimore's Inner Harbor; Baltimore, MD.

(a) Location. The following area is a security zone: all waters of Baltimore Harbor, Baltimore's Inner Harbor, from shoreline to shoreline, bounded on the east by a line drawn from position latitude 39° 17'03.41" N, longitude 076°36'28.35" W southerly to position latitude 39°16'58.24" N, longitude 076°36'27.59" W, located along the waterfront at Baltimore, MD. All coordinates refer to datum NAD 1983.

(b) Regulations. The general security zone regulations found in 33 CFR 165.33 apply to the security zone created by this temporary § 165.T05.0767.

(1) All persons are required to comply with the general regulations governing security zones found in 33 CFR 165.33.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor at the time the security zone is implemented do not have to depart the security zone. All vessels underway within this security zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the security zone must first obtain authorization from the Captain of the Port

Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(c) Definitions. As used in this section:

Captain of the Port Baltimore means the Commander, U.S. Coast Guard Sector Baltimore, Maryland or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the

security zone described in paragraph (a) of this section.

(d) Effective period. This rule is effective from 5 p.m. until 11:59 p.m. on September 5, 2013.

(e) Enforcement period. This section will be enforced from 5 p.m. until 11:59 p.m. on September 5, 2013.

Dated: August 15, 2013.

M. M. Dean,
Commander, U.S. Coast Guard,
Acting Captain of the Port Baltimore.

[FR Doc. 2013-21394 Filed 09/03/2013 at 8:45 am; Publication
Date: 09/04/2013]